IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dr. Saiyad Nasir Ansari. Versus Smt. Ishrat.

S.B. Criminal Revision Petition No. 604/2004 against the order dated 5-8-2004 passed by the Additional Chief Judicial Magistrate No.2, Bikaner, in Criminal Misc. Case No.209/1998.

...

Date of Order: May 25, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pradeep Shah and Mr. Deepak Menaria, for the petitioner.
Mr. Sandeep Mehta, for the non-petitioner.

BY THE COURT:

This criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 5-8-2004 passed by the Additional Chief Judicial Magistrate No.2, Bikaner (for short, "the trial Court" hereinafter) on an application of the non-petitioner under Section 3 of the Muslim Woman (Protection of Rights on Divorce) Act, 1986 (for short, "the Act" hereinafter) and held that the non-petitioner is entitled for a sum of Rs. 51,000/- as Mehar, Rs.15,000/- as maintenance for the Iddat period, Rs. 34,000/- towards approximate cost of dowry articles, Rs.50,000/- as the approximate cost of jewellaries and

Rs.5000/- as the litigation expenses. Aggrieved by the order impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the parties. Carefully gone through the order impugned as also the application filed by the non-petitioner, the statements made by the parties before the trial Court as also the document EX.D/1.

It is contended by the learned counsel for the petitioner that vide document EX.D/1 dated 19-4-1991, the non-petitioner has received a sum of Rs.84,000/-, which includes the amount of Mehar, maintenance for Iddat period and the approximate value of her belongings except the jewellaries.

Learned counsel for the non-petitioner submits that the document EX.D/1 dated 19-4-1991 is a document which has been forged by the petitioner. It is contended that a blank paper, taking the non-petitioner in belief for getting the VISA prepared for going to Saudi Arabia, was got signed. The non-petitioner , being the wife and having belief in her husband, the petitioner, signed the blank paper for getting the VISA prepared for going to abroad and that paper, which was blank and got signed on the pretext of getting the VISA prepared, was misused by the petitioner by forging the document EX.D/1. Learned counsel further submits that on 19-4-1991, the document EX.D/1 is alleged to have been written whereas it is admitted case of the parties that the divorce (Talak) took place between the parties

on 2-11-1993, i.e. almost after two years. There had been no occasion for paying the Mehar, maintenance for Iddat period and the approximate cost of belongings of the non-petitioner when the petitioner and the non-petitioner lived together for more than two years as husband and wife from the date of alleged document EX.D/1. Not only in India but also in abroad, during this period of two years, the parties lived together as husband and wife and from the wed-lock, a child was born at Saudi Arabia. Learned counsel submits that the Court below rightly did not rely on the document EX.D/1, which according to the learned counsel for the non-petitioner is obviously a forged one.

I have given my thoughtful consideration to the rival submissions made by the parties. I have carefully gone through the document EX.D/1.

The document EX.D/1 is alleged to have been written at Nisar House, Behind Rampuria College, Bikaner on 19-4-1991. Though at the bottom, on the left side of the document, it bears the signature of the non-petitioner but between her signature and the typed matter, there is a lot of space. There is no witness from Bikaner where the document is alleged to have been written, whereas the witness Shambhu Singh produced by the petitioner is said to be a resident of Singhaniya Colony, Water Works Road, Haathrash (U.P.), who appears to have signed the document EX.D/1 as a witness. From a perusal of the document

EX.D/1, it nowhere shows that he was present there. There was no reason for the signatory of the document leaving a lot of place and sign the document at the bottom of the paper. Not only this, the witnesses to the said document have signed above the signature of the non-petitioner , which in normal circumstances is not the practice. The trial Court held that it was a blank paper which was got signed from the non-petitioner by the petitioner being the husband with the belief for VISA proceedings as both the parties were to go to abroad and in fact that had visited to Saudi Arabia, stayed there for a number of years and the non-petitioner gave birth to a child from the loin of the petitioner. From a perusal of the document EX.D/1, it appears that many allegations have been made against Idris Ahmad, the father of the non-petitioner and Saeed Ahmad, the uncle of the non-petitioner and her family members. Obviously, such a language whether the non-petitioner would use against her father, uncle and other family members, is highly improbable. In my view, the learned trial Court rightly did not rely on the document EX.D/1, which obviously appears to be a forged one.

From the perusal of the reply filed by the petitioner to the application filed by the non-petitioner under Section 3 of the Act, it appears that the petitioner himself stated that the list of dowry articles filed by the non-petitioner is exaggerated

version. Had the cost of jewelleries articles and personal belongings of the non-petitioner been paid vide EX.D/1, there was no occasion for the petitioner to incorporate this version in the reply to the application under Section 3 of the Act filed by the non-petitioner.

From the statements of the parties, it is clear that the petitioner and the non-petitioner first lived at Mirzapur (U.P.) after the alleged date of the document EX.D/1 and thereafter at Saudi Arabia and subsequently after more than two years of the alleged date of the document EX.D/1, the divorce (Talak) between the parties took place. When the parties lived for more than two years after the date of the alleged document EX.D/1, there could not have been any occasion for the petitioner to pay the Mehar in advance before two years from the date of dissolution of the marriage, i.e. Talak. When the parties lived together, there was no occasion for the petitioner to pay the cost of the personal belongings of the non-petitioner or the cost of the dowry articles. Had the transaction took place between the parties as stated by the petitioner then it could have been after dissolution of the marriage (Talak.). The trial Court, relying on the statement of the non-petitioner and the witnesses produced by her, came to the conclusion that the petitioner failed to pay the amount of Mehar as also the maintenance allowance for the Iddat period and the approximate

cost of the personal belongings of the non-petitioner as also the approximate cost of the jewelleries and as such, by the impugned order, allowed the amount under these heads. In my view, the conclusion arrived at by the Court below is based on sound and proper appreciation of the evidence. I do not find any reason to take a different view than the one taken by the court below. In the circumstances, therefore, I do not find any error, illegality or perversity in the order impugned warranting interference in revisional jurisdiction.

Consequently, the revision petition is dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs